

## RESOLUTION

### THAT THE BOARD OF COUNTY COMMISSIONERS EXERCISE ITS RIGHT TO TERMINATE THE FOURTH AMENDMENT TO GROUND LEASE AGREEMENT WITH NEVADA LINKS, INC.

WHEREAS, the County of Clark (“the County”) and Nevada Links, Inc. (“Nevada Links”) are parties to a Ground Lease Agreement, dated July 20, 1999 (“the Lease”), as amended by the First Amendment, dated August 16, 2000, the Second Amendment, dated January 15, 2000, and the Third Amendment, dated May 21, 2002; and

WHEREAS, pursuant to the Lease, Nevada Links developed and operated a golf course called the Bali Hai Golf Club; and

WHEREAS, the Lease contains a participatory rent provision that entitles the County to receive rent payments from Nevada Links equal to a percentage of Nevada Links’ “net revenue” (the “Participatory Rent”) as further defined in the Lease; and

WHEREAS, Nevada Links’ operation of the Bali Hai Golf Club to date has not resulted in any payments to the County under the Participatory Rent; and

WHEREAS, the Board of County Commissioners approved a Fourth Amendment to the Lease on September 6, 2011; and

WHEREAS, the Fourth Amendment proposed replacing the Lease’s Participatory Rent with a fixed ground rent; and

WHEREAS, under Sections 1.2 and 1.6 of the Fourth Amendment, the Fourth Amendment would not have full force and effect until the Effective Date, meaning the date that three Conditions Precedent are satisfied; and

WHEREAS, under Section 1.2 of the Fourth Amendment, the Conditions Precedent require (1) Nevada Links to obtain express written approval of the terms and conditions of the Fourth Amendment from its current lender, (2) the County to obtain express written approval of the Fourth Amendment from the United States Bureau of Land Management, and (3) Nevada Links to obtain a final non-conforming zone change, with all applicable County protest and appeal periods having expired, on the property that entitle Nevada Links to be able to develop the commercial facilities on the property; and

WHEREAS, whether the Effective Date occurred or not, the County and Nevada Links agreed that on the Approval Date—defined in Section 1.1.3 as the date that the Board of County Commissioners approved the Fourth Amendment—Nevada Links would begin making provisional payments to the County in the amount of one hundred thousand dollars per year (the “Provisional Payments”), with annual percentage increases thereafter, as further defined in the Fourth Amendment; and

WHEREAS, in Sections 1.2 and 1.6 of the Fourth Amendment, the County and Nevada Links agreed that the fixed ground rent proposed in the Fourth Amendment would not replace the Participatory Rent in the Lease unless and until the Effective Date occurred; and

WHEREAS, in Section 1.6 of the Fourth Amendment, the County and Nevada Links therefore agreed that, in addition to the Provisional Payments, Nevada Links would continue to be required to pay the Participatory Rent as calculated under the Lease unless and until the Effective Date occurred; and

WHEREAS, under Section 1.2 of the Fourth Amendment, the County and Nevada Links agreed that if the Conditions Precedent were not satisfied within eighteen months after the Approval Date, then either the County or Nevada Links may, upon thirty days' advance notice to the other, terminate the Fourth Amendment, but not the Lease; and

WHEREAS, under Section 1.2 of the Fourth Amendment, the County and Nevada Links agreed that the eighteen-month period may be extended if the County determined that Nevada Links was devoting commercially reasonable efforts to satisfy the Conditions Precedent and the County determined to allow additional time to satisfy the Conditions Precedent; and

WHEREAS, under Sections 1.2 and 1.6 of the Fourth Amendment, the County and Nevada Links agreed that if either party exercises the right to terminate the Fourth Amendment before the Effective Date, the Fourth Amendment shall be of no further force and effect, and the Provisional Payments shall end with no refund or credit for Provisional Payments previously made; and

WHEREAS, the parties have not satisfied all the Conditions Precedent, including because the United States Bureau of Land Management has refused to approve the Fourth Amendment; and

WHEREAS, on September 1, 2017, the United States filed a lawsuit against the County and Nevada Links challenging the legality of the Fourth Amendment under the Southern Nevada Public Land Management Act, and that litigation is ongoing; and

WHEREAS, the Board of County Commissioners has determined that it is in the County's best interests to exercise its right to terminate the Fourth Amendment at this time; and

WHEREAS, upon approval of this Resolution, the County will provided thirty days' advance written notice to Nevada Links that the County intends to exercise its right to terminate the Fourth Amendment.

NOW THEREFORE, BE IT RESOLVED, that:

1. The Board of County Commissioners affirms the continued force and effect of the Lease, as amended by the First, Second, and Third Amendments; and
2. The Board of County Commissioners affirms that Nevada Links continues to be required to pay the Participatory Rent as calculated under the Lease; and

3. The Board of County Commissioners hereby exercises its right to terminate the Fourth Amendment to the Lease, by providing Nevada Links advance written notice in accordance with Section 1.2 of the Fourth Amendment. The termination of the Fourth Amendment shall become effective September 1, 2022.

PASSED, ADOPTED, AND APPROVED THIS \_\_\_\_ day of \_\_\_\_\_ 2022.

CLARK COUNTY, NEVADA

By: \_\_\_\_\_  
JAMES B. GIBSON, CHAIR  
BOARD OF COUNTY COMMISSIONERS

ATTEST:

\_\_\_\_\_  
LYNN MARIE GOYA  
COUNTY CLERK